



SACF WRITTEN COMMENTS ON THE DRAFT CODE FOR PERSONS
WITH DISBAILITIES published in Government Gazette No.41265 on 20
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INTRODUCTION

1. The SACF welcomes the opportunity to comment on the Draft Code for Persons with Disabilities Regulations (the Draft Code) for further comments as published in Government Gazette No.41265 on 20 November 2017.
2. The SACF represents a broad range of participants in the ICT sector, and includes licensees who will be affected by the Draft Code.
3. Our members remain committed to enabling equitable access to all citizens, especially vulnerable groups, including Persons with Disabilities.
4. The SACF would like an opportunity to make a presentation should the Authority hold public hearings.
5. We note the Authority's comments on the process, however, due to the considerable time lapse, it would have been useful for the Authority have provided some context on the contents of submissions that resulted in this Draft of the Code and the rationale for the provisions contained herein.
6. Our comments will be set out in two parts – General and Specific Comments.

A. GENERAL COMMENTS

Code vs Prescriptive Regulations

7. A Code intends to encourage particular behaviour without prescription that inhibits innovation. An unintended consequence of targets being too onerous, is that it has the potential to force licensees into a consequence of non-compliance and / or limits innovation.
8. Persons with Disabilities are an identifiable market segment, which our members strive to better serve as they do all other market segments with a culture of inclusion and understanding the challenges and barriers faced by disabled consumers towards improving the consumer experience. Innovation is key to achieving this.

9. Global best practice is for participants in a sector to develop a voluntary Code of Good Practice to promote a behaviour and includes access to services.

10. We note that research indicates that Persons with Disabilities continue to experience challenges and barriers to accessing Information Communication Technology (ICT). Notwithstanding the above, disabled persons strive to enjoy basic human rights by enhancing their independence and participating in society via the use of ICT's. Accessible ICT's plays a much bigger role in disabled people's daily lives. ICTs have the potential for increasing their quality of life by improving the person's independence enabling participation in society. The reason for this is because technology overcomes movement, space, time and physical presence which hugely benefits persons with disabilities.

The Statistics

11. According to Census 2011, the national disability prevalence rate in South Africa is 7.5%. Disability is more prevalent amongst women than men – 8.3% and 6.5% respectively. The disabilities in order of prevalence are sight, cognitive (remembering / concentrating), hearing and communication, self-care and walking -11%, 4.2%, 3.6% and 2% respectively. The frequency of a disability increases with age and the data relates to the population over 5 years of age.

12. Stats SA further disaggregates the data on Persons with Disabilities into Mild and Severe difficulty. The percentage of the population that has severe difficulties is a smaller subset of the overall category. The table below sets out the data on Persons with Disabilities.

Disability	Mild Difficulty		Severe Difficulty	
	Population	Percentage	Population	Percentage
Sight	4 085 898	9.3	458 526	1.7
Cognitive	1 405 098	2.5	423 179	1.0
Hearing	1 251 907	2.9	288 369	0.7

Source: Stats SA

THE CONCEPT OF UNIVERSAL DESIGN

13. The Concept of universal design is premised on designing infrastructure, products and services from the onset to be inclusive of accessibility features to enable accessibility that accommodates persons with disabilities and may equally be used by able-bodied people. Examples of universal design includes;
 - a. Broader parking bays;
 - b. Subtitles in programming and
 - c. Text to voice and voice to text features on devices.
14. The concept of universal design implies the inclusion of accessibility features during design and thus becomes available more broadly to everyone and is an increasing trend in newer devices.
15. Our members, who are licensees have consistently said that their control over devices and device features is limited. However, best practice promotes procurement that includes devices with accessibility features and features based on universal design.
16. While, it would be difficult and almost impossible for licensees to ensure that every device in the market is based on the principles of universal design they can endeavour to ensure that devices are available to different market segments and augment initiatives to educate disabled customers on the accessibility features of devices.
17. We note that regulation 5(1) states that *“an ECS licensee must ensure that all electronic communications devices ready for purchase are Universally Designed to cater for the needs of persons with disabilities.”*

We are of the view that the concept of universal design is not limited to ECS only. This is a misnomer. Accessibility services are also applicable to broadcasting programming also has universal appeal.
18. Despite this being an explicit provision, subsequent sections of the Draft Code appear to significantly veer away from the principle of universal design.

The operating environment

19. It is important for the Authority to adopt a forward-looking to the regulatory framework that encourages greater accessibility, while recognizing the substitutability and complimentary non-licensed products and services available to Persons with Disabilities.
20. The Authority's jurisdiction is limited. Licensees have licence and regulatory obligations and compete with non-licensed services.
21. Innovation and limited prescription is essential in an environment of increased pressure on the availability of products and services at lower prices while competing with non-licensed substitutes.
22. International best practice recommends that a Regulatory Impact Assessment (RIA) be conducted to understand the impact of the proposed regulations. Should the Authority already have conducted a RIA, we humbly request the Authority to share the RIA with interested stakeholders.

B. SPECIFIC COMMENTS

BROADCASTING

23. We note that the Regulations on Broadcasting are prescriptive and that the accessibility services are a duplication. Several accessibility services included for Broadcasting Service licensees are viable substitutes and these include sub-titling, audio-captioning and closed captioning address the same Disability segment. The cost of providing these services is high and does not necessarily make services more accessible.
24. A more pragmatic and effective approach may be for the Authority to instead have a requirement for Broadcasting service licensees to provide accessibility services that addresses each of the disabilities that have the highest prevalence according to Stats SA.
25. Instead of the inclusion of quotas, the Authority, ought to encourage licensees to report on the level of services available to address each of the most prevalent

disability segments. Should the Authority not note a trend of increasing access to Persons with Disabilities, then perhaps the Authority should consider a more prescriptive approach.

BASICS STANDARDS FOR ELECTRONIC COMMUNICATIONS SERVICES DEVICES

26. We note that much of the obligations for ECS licensees focuses on devices.

- a. Licences issued under the adopt a technology neutral approach, yet the Draft Code does not, therefore, the separation of fixed and mobile obligations may be a false notion.
- b. This section of the Draft Code is purportedly underpinned by the principle of universal design, yet the regulations that follow deviate significantly from this principle.

27. It is important for the Authority to note that access to devices does not form part of the licensed services nor are they only available from licensees. While, licensees are a significant channel for consumers to gain access to devices they are not the only source. The inclusion of the requirement for universal design in the provisions for type approval in the ECA Amendment Bill will contribute significantly towards ensuring greater access to universal design devices.

28. Regulation 5(1) requires every device to be based on universal design. This is not possible for the following reasons:

- a. Licensees do not have control over device features;
- b. There are numerous devices that are already in the market that may not comply with the principle of universal design.

29. There already are many devices with accessibility features available in the market that are accessible to various income groups.

30. However, SACF members understand that devices with accessibility features may not be widely known amongst Persons with Disabilities. We are of the view

that this could be enhanced through the inclusion of disability icons in advertising.

31. This could be phased into all adverts over a 12-month period after the promulgation of the final Draft Code.
32. Based on the above regulation 5(2) appears to be superfluous as our proposals above will ensure greater awareness about accessibility features of devices.

GENERAL REQUIREMENTS

Obligation of Printed Directories

33. There is no obligation on all licensees to provide printed directories, at present. Instead, licensees are required to provide a Directory Inquiry services to end-users. Therefore, regulation 6(1) cannot be conceived as a substitute for Persons with Disabilities, as they would already have access to directory services. Directory enquiry services currently use voice and text services, which addresses the most prevalent disabilities.
34. To provide separate directory enquiry services to Persons with Disabilities, a licensee will have to distinguish between Persons with Disabilities and able-bodied people. A register of Persons with Disabilities who are entitled to free directory access would have to be created and maintained by licensees. The Protection of Personal Information Act, 2013 requires consent from each data subject.
35. Licensees provide access to Directory Inquiries at a charge, on cost-recovery basis as they are required to pay to access the directory enquiry database.

EMERGENCY SERVICES

36. Regulation 6(2) appears to contradict the concept of universal design, as universal design seeks to make services available on a universal basis to all end-users.
37. Further, the rationale for the different number is unclear. The unintended consequences of this proposal are:

- a. An extremely limited number of people will be aware of a different number dedicated to Persons with Disabilities.
- b. In an environment of increasing pressure on the lowering of prices for end users, the unintended consequence of this regulation is that licensees will have an additional cost of marketing for an additional emergency number.

38. Therefore, we are of the view that a single emergency number is preferable. While, our members endeavour to ensure that staff at that customer facing roles are adequately trained to interact and assist Persons with Disabilities they do not always have full control over all aspects of the service provided.

PRIORITY FAULT REPAIRS

39. Our members will endeavour to ensure priority fault repairs for Persons with Disabilities but wish to caution the Authority over the following:
- a. A register may need to be established;
 - b. Collecting personal information regarding a person's disability is regulated in terms of the Protection of Personal Information Act, 2013 and requires the consent of the data subject.

DEMONSTRATION OF EQUIPMENT

40. This obligation already exists in the End User and Subscriber Service Charter regulations of 2016. We understand this obligation to include to Persons with Disabilities therefore, it appears to be a duplication to include this provision in the Draft Code as well.

ACCESS TO INFORMATION

41. Again, we must highlight that despite the framework for the Draft Code being the principle of universal design, the provisions of the Draft Code are a significant departure from this principle.
42. Regulation 6(a) provides for the access of information to deaf people. Why is this provision specific to deaf people, should this not apply to all subscribers including Persons with Disabilities?

43. Licensees as a matter of their standard commercial activities promote products and services based on the SACF's proposal above is likely to be more effective SACF members who are ECS licensees proposed the inclusion of Accessibility icons in standard advertising over a period of 18 months.

COMPLAINTS PROCESSES FOR ALL CATEGORIES OF DISABILITIES

44. The End User and Subscriber Service Charter regulations of 2016 provide for a detailed process for complaints, on which there has been considerable awareness generated. Accordingly, it is unclear why there would be a separate complaints process for Persons with Disabilities or what difference the Authority envisages for this process. We therefore, recommend that the process as set out in the 2016 End User be used for simplicity and clarity.
45. Our members will endeavour to treat complaints by Persons with Disabilities as a priority complaint.

COMPLIANCE REPORTING

46. Following our proposals in this submission we are of the view that regulation 9 is vague. We therefore propose, the following:
- a. licensees to report on what accessibility services they made available in the past year;
 - b. was there an increase to services provided in the previous year;
 - i. variance in terms of services for each category of disability; and
 - c. challenges faced in service provision.

CONTRAVENTIONS

47. We understand the R5 million fine included in regulation 10 to be the maximum fine applicable subject to a compliance process, where our members will have opportunities for representation.

CONCLUSIONS

48. The SACF welcomes the opportunity to comment and are of the view that the Draft Code requires substantive changes.
49. We recommend that the Authority adopt a light touch, as there appears to be no evidence supporting the proposals in the current Draft Code. In this regard, we would reiterate our earlier comment that the Authority should adopt internal best practice and allow industry to develop a Code of Good Practice which may include areas of concern to the Authority and licensees could be invited annually to present on their progress with compliance with a voluntary Code of Conduct as we are of the view that this more likely to encourage the outcomes of improved accessibility to Persons with Disabilities without inhibiting innovation.
50. Should the Authority hold public hearings on the Code, we would welcome the opportunity to make a submission.